



Legislative Research Council

MINUTES

SDHSAA Interim Committee

Senator Craig Tieszen, Chair
Representative Jim Bolin, Vice Chair

Third Meeting
2015 Interim
October 30, 2015

Room 412
State Capitol
Pierre, South Dakota

The third meeting of the South Dakota High School Activities Association (SDHSAA) Interim Committee was called to order by **Senator Craig Tieszen** at 1:00 p.m. (CST) in room 413 of the State Capitol.

A quorum was determined with the following members answering the roll call: Senator Craig Tieszen, Chair; Representative Jim Bolin, Vice Chair; Senators Jim Bradford, Larry Tidemann, and Bill Van Gerpen (via telephone); and Representatives Julie Bartling, Roger Hunt, Kris Langer (via telephone), Tim Rounds, Tona Rozum, and Kyle Schoenfish.

Staff members present included Ms. Roxanne Hammond, Legislative Attorney; Ms. Clare Charlson, Principal Research Analyst; Mr. Jason Simmons, Senior Fiscal Analyst; and Ms. Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.sd.gov>.

Approval of Minutes

REPRESENTATIVE ROUNDS MOVED, SECONDED BY REPRESENTATIVE BARTLING, TO APPROVE THE MINUTES OF THE AUGUST 20, 2015, MEETING OF THE SDHSAA INTERIM COMMITTEE. Motion prevailed on a voice vote.

Presentation of Bills Drafted for Committee

Ms. Roxanne Hammond, Legislative Attorney, distributed copies of two pieces of legislation that the committee had requested to be drafted (**Document #1**).

Draft #94 – *An Act to define gender for the purpose of participation in high school activities.* Ms. Hammond explained that this bill is specific just to participation in high school activities.

Draft #95 – *An Act to define gender for the purpose of any gender-specific determination.* Ms. Hammond explained that this bill would be applicable in any situation, not just high school activities.

These bills were drafted based on language from the Family Heritage Alliance letter as had been requested at the previous committee meeting.

Discussion on Committee Final Report

Ms. Hammond explained the process for preparing the final committee report that will be presented to the Executive Board at their November 16 meeting.

Ms. Hammond then went through the questions outlined in the original scope of this interim committee as approved by the Executive Board:

- How is the SDHSAA accountable to the legislative and/or the executive branch (DOE)?
- Does the SDHSAA exceed rule making authority and do they provide adequate public notice?
- Are there other associations with similar issues?
- Should schools be required to pay dues to this organization?
- What is their relationship and responsibility to the National Federation of High School Activities?
- What is their status under South Dakota law?
- Are they subject to open meeting laws?
- Is the one school/one vote policy of the organization valid?

Senator Tieszen asked for committee comments on the final report. **Representative Tim Rounds** said that there are some questions in the scope that the committee has not addressed.

Senator Tieszen said that a fair amount of time was spent on an overview of the SDHSAA, how it operates and how they take action. **Representative Jim Bolin** said that he does better understand the SDHSAA, adding that there is still a question of where the association's authority comes from.

Senator Jim Bradford said that he does not believe the legislature should meddle in an organization that is not under the legislature and the legislature does not fund them.

Representative Roger Hunt said that there is still a question as to whether or not the SDHSAA is a governmental entity. Representative Hunt commented that draft bill 95 does not direct where this act would be placed in statute and that he would like the committee to give such direction.

Senator Larry Tidemann pointed out that there were a number of issues that were addressed by the SDHSAA during this committee process. The information on site selection was very revealing and it is clear that these decisions are based on what is best for the student. The SDHSAA staff and board members also detailed how their meeting process works, including the procedure they use for voting on various issues. Senator Tidemann said that the Legislature addressing teacher pay is far more important than overseeing the site selection of school activities.

SDHSAA Comments

Mr. John Krogstrand, Assistant Executive Director, SDHSAA, said that they appreciate the conversation that occurred during this interim study and that they hope to continue this open dialogue with the Legislature.

Senator Tieszen asked if any changes had been made to the SDHSAA transgender policy since the previous study committee meeting. Mr. Krogstrand distributed a copy of the policy that had been approved at the SDHSAA meeting on August 27, 2015 (**Document #2**). This policy establishes the independent hearing officer as the decision maker regarding rulings on transgender students. This policy will be further discussed at the next SDHSAA board meeting.

According to Mr. Krogstrand, this policy is based on a survey of the member schools conducted last April. According to that survey, the majority of schools support a policy of inclusion based on how the student conducts his or her life the entire school day, not just during school activities.

Public Testimony

Ms. Libby Skarin, ACLU SD, Sioux Falls, said that the passage of draft 94 would mean that a transgender student would not be allowed to participate in school activities, and participation in school activities benefits all participants in several different ways.

Ms. Skarin said that the passage of draft 95 would create confusion, and conflicts with Title 9 and Title 7 and other related federal laws, as well as the 14th amendment that provides for equal protection. Ms. Skarin said that the SDHSAA has done a phenomenal job in being responsive to the needs of all students and she encourages the preservation of the current SDHSAA policy.

Committee Discussion

Representative Tona Rozum said that determining sex at birth is not always possible because of anomalies in the makeup of the genitalia. According to Representative Rozum, 1 in 1066 births do not follow the typical XX or XY chromosome pattern, and that it needs to be understood that this is a physiological issue and not a moral issue. Representative Rozum added that people should be treated with kindness and fairness and not be judged without walking in their shoes.

Representative Hunt said that when talking about setting policy, we must recognize that some policies affect the entire state and in many different ways. There are students who say they will refuse to share a locker room with an individual of another gender. Representative Hunt added that the SDHSAA policy meets the needs of a very few students to the disadvantage of thousands of students. Representative Hunt commented that he is an advocate of draft 95, stating that people need a birth certificate to go to school or to apply for a passport, and that same document should be used to determine gender for school activities.

Senator Bill Van Gerpen said that the SDHSAA does a great job with many things such as the scheduling of events for the students. However, according to Senator Van Gerpen, there are policy decisions that the Legislature should be involved in, such as the alcohol and drug abuse policy the legislature passed several years ago. It is important that the Legislature retain its authority over making some of the high level policy decisions.

Senator Tidemann said that any individual legislator can sponsor this type of legislation, but he does not believe that either of the draft bills fit under the scope of this committee as assigned by the Executive Board.

Representative Julie Bartling said that policies that should be addressed by the Legislature should be to protect the public and these two draft bills do not apply.

A MOTION WAS MADE BY SENATOR TIDEMANN, SECONDED BY REPRESENTATIVE ROZUM, TO ADJOURN. The motion failed on a roll call vote with 5 voting AYE and 6 voting NAY. Those voting AYE: Bradford, Tidemann, Bartling, Rozum, Tieszen. Those voting NAY: Van Gerpen, Hunt, Langer, Rounds, Schoenfish, Bolin.

Representative Bolin said that he would like the committee to move the following legislation forward: Draft 94 – *An Act to define gender for the purpose of participation in high school activities*. Representative Bolin quoted Thomas Jefferson, “We hold these truths to be self-evident,” and said

that he believes the transgender policy adopted by the SDHSAA tries to overturn the self-evident truths that are known to exist.

Senator Tidemann said that in eastern South Dakota there are high schools that play teams from Minnesota and asked how that school is to react if the Minnesota school's team includes a transgender student. Senator Tidemann added that we have to care about all people.

Representative Rounds said that he has misgivings about a student following one set of rules during the school day and a different set of rules for school activities and it is that reason that he cannot support this legislation. Representative Rounds added that it is the school district that will be sued and have to pay attorney fees.

Senator Tieszen commented that not all truths are as self-evident as it sometimes seems. There are existing laws that are to protect the weak and the few from the many and the strong.

Representative Hunt commented that the government issued birth certificate is used for every other purpose and should be used for determining the gender of a student. Representative Hunt added that we cannot just protect the minority, but we must also protect the majority.

A MOTION WAS MADE BY REPRESENTATIVE BOLIN, SECONDED BY REPRESENTATIVE HUNT, TO SUBMIT DRAFT 94 AS COMMITTEE LEGISLATION. The motion failed on a roll call vote with 4 voting AYE and 7 voting NAY. Those voting AYE: Van Gerpen, Hunt, Langer, Bolin. Those voting NAY: Bradford, Tidemann, Bartling, Rounds, Rozum, Schoenfish, Tieszen.

Representative Hunt said that he would like the committee to move forward Draft 95 – *An Act to define gender for the purpose of any gender-specific determination*. Representative Hunt said that this is an easy test for determining gender. Representative Hunt added that he does not understand how the official birth certificate would not be used when determining gender, as the birth certificate can be changed if needed.

Senator Tidemann pointed out that the medical community does not fully support the idea that gender can always be identified at birth. Representative Rozum added that research shows that genitalia at birth can be in question and an accurate determination may not be made until puberty.

A MOTION WAS MADE BY REPRESENTATIVE HUNT, SECONDED BY REPRESENTATIVE LANGER, TO SUBMIT DRAFT 95 AS COMMITTEE LEGISLATION AND THAT IT SHOULD BE PLACED UNDER THE VITAL STATISTIC SECTION OF THE CODE. The motion failed on a roll call vote with 4 voting AYE and 7 voting NAY. Those voting AYE: Van Gerpen, Hunt, Langer, Bolin. Those voting NAY: Bradford, Tidemann, Bartling, Rounds, Rozum, Schoenfish, Tieszen.

Adjourn

REPRESENTATIVE BARTLING MOVED, SECONDED BY REPRESENTATIVE ROZUM, THAT THE SDHSAA INTERIM COMMITTEE BE ADJOURNED. The motion prevailed on a voice vote.

The SDHSAA Interim Committee adjourned at 2:50 p.m.